

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

FOUAD DAOU,

Plaintiff,

v.

RICK A. ABELSON, SOURYA
ABELSON, NAJWA ABAZAKI,
MAYSOUN FLETCHER, and AKRAM H.
ABOLHOSEN,

Defendants.

AND ALL RELATED
COUNTERCLAIMS AND THIRD
PARTY CLAIMS

2:11-CV-01385-PMP-GWF

ORDER

Presently before the Court is Third Party Defendant Donia R. Daou's Motion to Dismiss Third Party Claim or in the Alternative, Dismiss the Complaint (Doc. #88), filed on July 17, 2013. Defendant/Third Party Plaintiff Riad "Rick" Abelson filed an Opposition (Doc. #95) on August 12, 2013. Third Party Defendant Donia R. Daou filed a Reply (Doc. #103) on August 22, 2013.

I. BACKGROUND

This lawsuit was brought by Plaintiff Fouad Daou ("Fouad") against his cousin, Defendant Riad "Rick" Abelson ("Rick"); Rick's wife, Defendant Sourya Abelson ("Sourya"); Rick's sister, Defendant Maysoun Fletcher ("Maysoun"); Rick's other sister, Najwa Abazaki ("Najwa"); and the three siblings' father, Defendant Akram H. Abolhosen

1 (“Akram”). (Am. Compl. (Doc. #41) at 2-3.) Fouad alleges that Rick was viewed by his
2 family as a successful optometrist and real estate investor, and Rick did not dispel his
3 family’s view even though his medical license was suspended and his real estate holdings
4 were subject to multiple mortgages and personal loans. (Id. at 4.) Fouad alleges he shared
5 his family’s favorable image of Rick, and between 2004 and 2009, Fouad gave Rick
6 approximately \$1,240,000 to invest in Nevada real estate on Fouad’s behalf. (Id.) Fouad
7 placed the money in a joint banking account held in both Fouad and Rick’s names, or he
8 transferred money into Najwa’s account, and she would transfer funds to Rick. (Id.)

9 According to the Amended Complaint, instead of investing the money on
10 Fouad’s behalf, Rick used the money to pay off his own debts or purchased real estate in his
11 own name, not in Fouad’s name. (Id.) Fouad alleges that when he asked Rick to record
12 ownership of certain property in Fouad’s name, Rick, Akram, and Najwa falsely advised
13 him that the property could not be transferred to Fouad unless Fouad appeared in Nevada to
14 be fingerprinted and to personally execute the property deed. (Id. at 5.) According to the
15 Amended Complaint, Rick also falsely told Fouad that Fouad could not own property in the
16 United States because Fouad was not a United States citizen. (Id.) Fouad asserts claims for
17 breach of contract, unjust enrichment, fraud in the inducement, fraud, breach of the implied
18 covenant of good faith and fair dealing, and civil conspiracy.

19 Rick and Akram filed a Counterclaim against Fouad and filed a Third Party
20 Complaint against Third Party Defendants Donia F. Abi Rafeh Daou (“Donia”), Fouad’s
21 wife, and Ziad Daou (“Ziad”), Fouad’s brother. (Ans. to Am. Compl., Countercl., & Third-
22 Party Compl. (Doc. #37) [“Third Party Compl.”] at 8.) Rick and Akram allege that in 2010,
23 they loaned money to Fouad and temporarily conveyed title to real property located in
24 Lebanon in Fouad’s name, which Fouad promised to reconvey to Rick and Akram. (Id. at
25 10.) Rick and Akram allege they loaned the money and conveyed the property because
26 Fouad, Donia, and Ziad told them that Fouad needed the assets to keep from being sent to

1 prison in Saudi Arabia. (Id.)

2 According to the Third Party Complaint, Fouad did not use the money and
3 property as intended, Fouad was not in danger of being sent to jail, and Fouad has refused
4 to repay the loans or reconvey the property. (Id. at 10-11, 16.) Rick and Akram further
5 allege Fouad and Ziad forged a bill of sale for property located in Nevada, placing the
6 property in the names of Fouad and Donia. (Id. at 16.) Rick and Akram bring claims for
7 breach of contract, breach of the covenant of good faith and fair dealing, unjust enrichment,
8 conversion, promissory estoppel, constructive trust, fraud in the inducement, fraud, civil
9 conspiracy, Nevada civil RICO, and for declaratory relief. (Id. at 13-29.)

10 Third Party Defendant Donia now moves to dismiss the Third Party Complaint
11 against her. Donia argues the Court has no jurisdiction over the property located in
12 Lebanon, and the Court therefore cannot grant relief in relation to that property.
13 Alternatively, Donia argues the Court lacks personal jurisdiction over her because she was
14 not served in Nevada or anywhere else, and she lacks minimum contacts with Nevada.
15 Donia also contends that discovery is now closed, and there is no evidence that she
16 conspired with her husband to deprive Rick or Akram of their property.

17 Third Party Plaintiffs Rick and Akram respond that the parties have not taken
18 Donia's deposition yet, and therefore the motion is premature. Rick and Akram further
19 argue that the Court has jurisdiction over the parties, and therefore has contempt power to
20 compel the parties to take appropriate actions, such as transferring property in Lebanon. As
21 to personal jurisdiction, Rick and Akram argue that Donia is a recorded property owner of
22 property in Nevada, she is a managing member of a Nevada limited liability company, and
23 she filed a United States tax return in 2008 with a Nevada address. Additionally, Rick avers
24 that Donia visited Las Vegas, Nevada, inspected property in Las Vegas, and implored Rick
25 to provide the money and property to Fouad while Donia and Rick were in Las Vegas. Rick
26 and Akram therefore contend Donia has minimum contacts with Nevada. Moreover, Rick

1 and Akram argue Donia waived the personal jurisdiction issue because she did not raise it
2 by motion prior to her Answer or as an affirmative defense in her Answer.

3 **II. DISCUSSION**

4 **A. Personal Jurisdiction**

5 Pursuant to Federal Rule of Civil Procedure 12(h)(1)(A), a party waives the
6 defenses of insufficient service of process and lack of personal jurisdiction if the party does
7 not raise the defense in a pre-answer motion or in the answer. Donia filed her Answer
8 (Doc. #62) on July 9, 2012. Donia did not assert that she was not properly served or that the
9 Court lacked personal jurisdiction over her. Donia therefore waived these defenses.

10 Even if Donia had not waived these defenses, Donia contends she was never
11 served, but Rick and Akram filed a proof of service showing Donia was served in Lebanon
12 on June 18, 2012. (Summons Returned Executed (Doc. #61).) Donia has not explained
13 why this service was insufficient.

14 As to personal jurisdiction, Rick and Akram bear the burden of demonstrating the
15 Court has jurisdiction over Donia. Pebble Beach Co. v. Caddy, 453 F.3d 1151, 1154 (9th
16 Cir. 2006). To meet this burden, Rick and Akram must demonstrate that personal
17 jurisdiction over a defendant is (1) permitted under Nevada's long-arm statute and (2) that
18 the exercise of jurisdiction does not violate federal due process. Id. As to the first issue,
19 Nevada's long-arm statute allows courts to exercise personal jurisdiction over defendants to
20 the extent permitted by the Due Process Clause of the United States Constitution. Nev.
21 Rev. Stat. § 14.065(1) ("A court of this state may exercise jurisdiction over a party to a civil
22 action on any basis not inconsistent with the constitution of this state or the Constitution of
23 the United States."). Because Nevada exercises jurisdiction to the extent the Constitution
24 permits, the Court need determine only whether personal jurisdiction in this case would
25 meet federal due process standards. Harris Rutsky & Co. Ins. Servs., Inc. v. Bell &
26 Clements Ltd., 328 F.3d 1122, 1129 (9th Cir. 2003).

1 To satisfy federal due process standards, a nonresident defendant must have
2 “minimum contacts” with the forum state so that the assertion of jurisdiction does not
3 offend traditional notions of fair play and substantial justice. Pebble Beach Co., 453 F.3d at
4 1155 (quotation omitted). A federal district court may exercise either general or specific
5 personal jurisdiction. See Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S.
6 408, 414-15 (1984).

7 To establish general personal jurisdiction, the plaintiff must demonstrate the
8 defendant has sufficient contacts to “constitute the kind of continuous and systematic
9 general business contacts that ‘approximate physical presence.’” Glencore Grain
10 Rotterdam B.V. v. Shivnath Rai Harnarain Co., 284 F.3d 1114, 1124 (9th Cir. 2002)
11 (quoting Bancroft & Masters, Inc. v. Augusta Nat’l Inc., 223 F.3d 1082, 1086 (9th Cir.
12 2000), modified, Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme, 433 F.3d
13 1199, 1207 (9th Cir. 2006)). “[A] defendant whose contacts are substantial, continuous,
14 and systematic is subject to a court’s general jurisdiction even if the suit concerns matters
15 not arising out of his contacts with the forum.” Id. at 1123.

16 A nonresident defendant’s contacts with the forum state may permit the exercise
17 of specific jurisdiction if: (1) the defendant has performed some act or transaction within
18 the forum or purposefully availed himself of the privileges of conducting activities within
19 the forum, (2) the plaintiff’s claim arises out of or results from the defendant’s
20 forum-related activities, and (3) the exercise of jurisdiction over the defendant is
21 reasonable. Pebble Beach Co., 453 F.3d at 1155-56. “If any of the three requirements is
22 not satisfied, jurisdiction in the forum would deprive the defendant of due process of law.”
23 Omeluk v. Langsten Slip & Batbyggeri A/S, 52 F.3d 267, 270 (9th Cir. 1995).

24 The issue is before the Court on a motion to dismiss based on affidavits and
25 discovery materials without an evidentiary hearing. Rick and Akram therefore must make
26 “a prima facie showing of facts supporting jurisdiction through [their] pleadings and

1 affidavits to avoid dismissal.” Glencore Grain, 284 F.3d at 1119. The Court accepts as true
2 any uncontroverted allegations in the Third Party Complaint and resolves any conflicts
3 between the facts contained in the parties’ evidence in favor of Rick and Akram. Id.

4 Rick and Akram have established a prima facie case that this Court may exercise
5 personal jurisdiction over Donia. Rick avers that he met with Donia in Las Vegas fifteen
6 times over the past ten years when Donia visited “for purposes of monitoring and
7 investigating the status of [her and Fouad’s] real property ownership in Nevada, for family
8 visitations, and for shopping.” (Opp’n to Mot. to Dismiss Third Party Claim or in the
9 Alternative, Dismiss the Compl. Against Donia R. Daou (Doc. #95), Aff. of Riad “Rick”
10 Abelson [“Rick Aff.”] at 3.) Donia went to various properties in Las Vegas and Pahrump
11 that Rick had purchased or planned to purchase on behalf of Fouad and Donia. (Id. at 3, 5.)

12 Rick avers that Donia visited him at his home in Las Vegas in January 2010, at
13 which time Donia “personally implored” Rick “to assist her husband to avoid jail based
14 upon the alleged pending criminal charges which might imprison Fouad unless he was
15 provided with assets in his name.” (Id. at 3-4.) According to Rick, Donia’s statements
16 induced Rick and Akram to convey land and money to Fouad on the condition that the
17 assets be returned once the criminal charges were resolved. (Id. at 4.) However, when Rick
18 attempted to regain the funds and property, he was met with a denial that the transfers of
19 money and property were temporary. (Id.) Rick contends this scheme was “directly
20 relate[d] to [Fouad and Donia’s] apparent attempt to recover losses sustained by all in
21 Nevada real property investments.” (Id. at 5.)

22 Rick and Akram therefore have presented evidence that Donia has performed acts
23 or transactions within Nevada, including visits to view the Nevada properties that were the
24 subject of an agreement and later dispute between Rick and Fouad. The losses sustained
25 from these investments in Nevada property allegedly were the impetus for Donia making
26 fraudulent statements to Rick in Nevada to induce him to loan money and convey property

1 to Fouad. Rick and Akram's claims arise out of Donia's forum-related contacts, as their
2 claims relate to the parties' alleged agreements and representations regarding the loans and
3 conveyance of property to Fouad, as well as Donia's alleged misrepresentations to Rick and
4 Akram. Finally, it is reasonable for the Court to exercise personal jurisdiction over Donia.
5 Having allegedly made false representations in Nevada to a then-Nevada resident to induce
6 him and his father to convey money and property, it would be reasonable for Donia to be
7 haled into a Nevada court to litigate claims arising out of those activities. The Court
8 therefore will deny Donia's Motion to the extent it is based on the argument that the Court
9 lacks personal jurisdiction over her.

10 **B. Subject Matter Jurisdiction**

11 Because the Court has personal jurisdiction over Donia, the Court could order her
12 to take appropriate action in Lebanon, or alternatively to pay damages, should Rick and
13 Akram prevail. See F.T.C. v. Affordable Media, 179 F.3d 1228, 1240 (9th Cir. 1999)
14 ("Because the physical person of the defendant remains subject to domestic courts'
15 jurisdictions, courts could normally utilize their contempt powers to force a defendant to
16 return the assets to their jurisdictions."). The Court therefore does not lack jurisdiction due
17 to the fact that the parties' dispute involves property in Lebanon.

18 **C. Failure to State a Claim/Summary Judgment**

19 It is unclear from Donia's Motion whether she seeks dismissal or summary
20 judgment. To the extent Donia seeks dismissal because the Third Party Complaint contains
21 only "bare allegations" of her participation, the Court will deny the Motion. (Mot. to
22 Dismiss Third Party Claim or in the Alternative, Dismiss the Compl. Against Donia R.
23 Daou (Doc. #88) at 6.) The Third Party Complaint adequately alleges plausible, non-
24 conclusory factual allegations regarding Donia's participation in an alleged scheme with
25 Fouad and Ziad to defraud Rick and Akram out of money and property. (Third Party
26 Compl. at 15-18, 20-21); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556 (2007). The Third

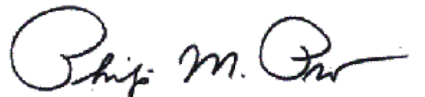
1 Party Complaint alleges Donia knew the representations regarding Fouad facing prison in
2 Saudi Arabia were untrue, but she acted in concert with Fouad and Ziad when she told Rick
3 and Akram that Fouad needed property titled in his name to avoid prison. (Third Am.
4 Compl. at 15-18, 20-21.)

5 To the extent Donia seeks summary judgment because “absolutely no evidence
6 exists” that Donia conspired with Fouad to deprive Rick and Akram of money and property,
7 the Court will deny the Motion. Rick states in his affidavit that Donia “implored” and
8 “pleaded with” Rick to assist Fouad in avoiding prison in Saudi Arabia, which induced Rick
9 and Akram to convey land and property to Fouad on what was supposed to be a temporary
10 basis. (Rick Aff. at 4.) According to Rick, these statements were false, and were an
11 attempt by Fouad and Donia to recover their losses in real estate investment deals with Rick
12 in Nevada. (*Id.* at 4-5.) Upon attempting to recover the money and property, Rick and
13 Akram were met with denials that the transfers were supposed to be temporary. (*Id.* at 4.)
14 Rick and Akram therefore have presented evidence of Donia’s participation, and the Court
15 will deny Donia’s Motion for dismissal or for summary judgment.¹

16 **III. CONCLUSION**

17 IT IS THEREFORE ORDERED that Third Party Defendant Donia R. Daou’s
18 Motion to Dismiss Third Party Claim or in the Alternative, Dismiss the Complaint (Doc.
19 #88) is hereby DENIED.

20 DATED: March 9, 2014



PHILIP M. PRO
United States District Judge

24 ¹ Donia’s Motion does not present evidence or argument specific to any particular cause of
25 action beyond her general arguments that there are no allegations or evidence of her participation in
26 the events in question. The Court therefore will not engage in a claim-by-claim analysis. See LR 7-
2(d).